meaning of the legislature in cases of doubtful interpretation," but "when words are free from doubt they must be taken as the final expression of the legislative intent. . . ." *Caminetti v. United States*, 242 U.S. 470, 490 (1917).

This is a "stopping rule" for the courts. "[T]he interpreter stops searching for further evidence of legislative intentions when the statutory text is clear. Further search, into legislative history for example, is permissible only when the statutory text is ambiguous or otherwise lacks a plain meaning." Adrian Vermeule, *Three Strategies of Interpretation*, 42 San Diego L. Rev. 607, 614-15 (2005); *see, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("[T]he beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished.").

B. The Plain Meaning Rule Is Essential to Congress's Optimal Performance.

The Members of Congress have certain reasonable expectations of their co-equal partner in governance, the federal judiciary. One of those expectations is that the courts will operate as a check on the constitutionality of legislation through exercise of the power of constitutional review. Equally fundamental to our system of checks and balances, however, is the expectation of faithful adherence to the text of federal legislation. Implicit in that expectation is that the judiciary will "read the words of that text as any ordinary Member of Congress would have read them." *Chisom v. Roemer*, 501 U.S. 380, 405 (1991) (Scalia, J., dissenting).

The Members of Congress expect judicial respect for the plain meaning rule, and they rely on this expectation to do their job well.

1. The rule provides an incentive for Congress to speak plainly.

Legislating in plain language is good lawmaking. It promotes predictability and stability in the law, and it is one of the intended benefits of the constitutional separation of powers. Separation-of-power theorists among the Founders "argued that the separation of lawmaking from judging would give legislatures an important incentive to enact clear and constraining laws, rather than granting the judiciary excessive discretion through the statutes enacted." Manning, *supra*, at 67. Plain-language legislating prevents judicial encroachment into legislative functions, which is threatened when legislation is vague.

Judicial adherence to the plain meaning rule encourages the Members of Congress to legislate in plain language, which is good for national governance in both theory and practice.

2. The rule discourages manipulation of the legislative record to promote individual lawmakers' agendas.

The more courts resort to legislative history as an aid to statutory interpretation, the more individual lawmakers might be encouraged to manipulate the legislative record to include material that might not provide reliable clues to the intent of Congress as a whole but instead promote individual views that may or may not have been shared by other Members. Some have argued that "the

practice of consulting legislative history encourages the strategic, surreptitious shaping of the legislative record to favor a particular gloss on the statute, rendering those materials unreliable indicia of intent." Miranda Oshige McGowan, *Against Interpretation*, 42 San Diego L. Rev. 711, 730-731 (2005).

Faithful adherence to the plain meaning rule discourages such manipulation of the legislative record. Given the inherent imprecision of language, legislators cannot always avoid ambiguity which requires an examination of legislative history. But the more the courts look solely to plain language, and the less they resort to legislative history, the less likely it will be that individual lawmakers are tempted to play games with the legislative record.

3. The rule gives Congress a background of reliable judicial interpretation upon which Congress may depend to legislate.

It is of "paramount importance" to Congress that its Members "be able to legislate against a background of clear interpretive rules, so that [Congress] may know the effect of the language it adopts." *Finley v. United States*, 490 U.S. 545, 556 (1989). Of those interpretive rules, the clearest is the plain meaning rule. Faithful adherence to that rule gives Members of Congress a solid foundation for good legislating, secure in the knowledge that their use of plain language will avoid blurring the separation of powers.

4. The rule militates against this Court acting as Congress's taskmaster.

This Court is not subordinate to Congress; nor vice versa. The two branches of government are co-equal partners. Consequently, this Court should eschew jurisprudence that "casts this Court in the role of Congress's taskmaster" where the Court "must regularly check Congress's homework." *Tennessee v. Lane*, 541 U.S. 509, 558 (2004) (Scalia, J., dissenting).

Legislating is a difficult business, rife with bargains and compromise. It is made all the more difficult when courts persistently demand that lawmakers explain themselves in the legislative record behind the text of the statutes themselves. Members of Congress should not be required to lard the legislative record with "homework" explaining their intent, which is the inevitable consequence of persistent straying from the plain meaning rule. The more that happens, the more difficult it becomes for Congress to do its business effectively, as litigants seize upon tidbits of legislative history in attempts to twist plain statutory language as they would wish it to read.

III. THE PLAIN-MEANING CONSTRUCTION OF THE HOBBS ACT AS ENCOMPASSING ACTS OR THREATS OF VIOLENCE TARGETING INTERSTATE COMMERCE IS CONSISTENT WITH BOTH TEXTUALIST AND INTENTIONALIST APPROACHES TO STATUTORY INTERPRETATION.

A. Textualism and Intentionalism Use the Same Methodology and Yield the Same Result Here.

Federal judges and legal scholars have long debated the appropriate role of legislative history in statutory interpretation.

One school of thought is textualism, which disfavors resort to legislative history in determining legislative intent, preferring an effort to determine what the words of a statute objectively mean rather than what individual legislators might have subjectively intended them to mean. *See, e.g.*, Antonin Scalia, A Matter of Interpretation 16-18, 29-37 (1997); William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. Rev. 621, 669 (1990); Thomas W. Merrill, *Textualism and the Future of the Chevron Doctrine*, 72 Wash. U.L.Q. 351, 372 (1994). Justice Scalia has described textualism as follows:

> The meaning of terms on the statute books ought to be determined, not on the basis of which meaning can be shown to have been understood by a larger handful of the Members of Congress; but rather on the basis of which meaning is (1) most in accord with context and ordinary usage, and thus most likely to have been understood by the *whole* of Congress which voted on the words of the statute (not to mention the citizens subject

> to it), and (2) most compatible with the surrounding body of law into which the provision must be integrated – a compatibility which, by a benign fiction, we assume Congress always has in mind.

Green v. Bock Laundry Mach. Co., 490 U.S. 504, 528 (1989) (Scalia, J., concurring).

A competing school of thought is intentionalism, which looks beyond statutory text for guidance in determining legislative intent. *See, e.g.*, Bradford C. Mann, *Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority, and Deference to Executive Agencies*, 86 Ky. L.J. 527, 529 (1997); Merrill, *supra*, at 354, 357. Justice Stevens has argued that "we do the country a disservice when we needlessly ignore persuasive evidence of Congress' actual purpose. . . ." *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 115 (1991) (Stevens, J., dissenting).

Textualism and intentionalism use the same methodology, however, and yield the same result, when statutory language is unambiguous. Such is the situation here.

B. The Text of § 1951(a) Plainly Makes it a Crime to Commit or Threaten Violence Targeting Interstate Commerce.

One of the statutes at issue in this case, 18 U.S.C. § 1951(a), states:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or

> purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

Textualists and intentionalists need go no further than the plain language of § 1951(a) to conclude that the statute makes it a crime to commit or threaten violence in furtherance of a plan or purpose to obstruct, delay, or affect interstate commerce. We need only break the statute into its component parts:

> "Whoever in any way or degree obstructs, delays, or affects commerce or movement of any article or commodity in interstate commerce,"
>
> - "by robbery or extortion or attempts or conspires to do so, or"
> - "commits or threatens violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section"
>
> "shall be fined under this title or imprisoned not more than twenty years, or both."

The statute's use of the disjunctive "or" makes plain that a violation can occur "by robbery or extortion" *or* when the offender "commits or threatens violence" targeting interstate commerce. And that is precisely how this Court has previously read § 1951(a) – as punishing "interference with interstate commerce by extortion, robbery or physical violence." *Stirone v. United States*, 361 U.S. 212, 215 (1960).

The language of the Hobbs Act tells both textualists and intentionalists all they need to know about legislative intent.

C. The Context of the Hobbs Act – Its Title – Verifies Its Plain Meaning.

Something else on which textualists and intentionalists agree is that "'the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'" *Smith v. United States*, 508 U.S. 223, 241 (1993) (Scalia, J., dissenting). Even textualists "acknowledge that language has meaning only in context." Manning, *supra*, at 108.

The context of § 1951(a) includes its title: "Interference with commerce by threats or violence." As far back as the Marshall era, this Court held that although the title of an act cannot trump its plain text, the title "may furnish some aid in showing what was in the mind of the legislature." *Palmer*, 16 U.S. (3 Wheat.) at 631; *see also United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805) (stating that title can be used to "assist in removing ambiguities"). This Court has repeatedly restated that rule. *See, e.g., Almendarez-Torres v. United States*, 523 U.S. 224, 233-34 (1998); *Rector of Holy Trinity Church v. United States*, 143 U.S. 457, 462 (1892).

Thus, both the plain language of the Hobbs Act and its title demonstrate Congress's intent – that § 1951(a) encompasses acts or threats of violence targeting interstate commerce. Even the rule of lenity must yield to that intent. *See Wiltberger*, 18 U.S. (5 Wheat.) at 95.

IV. THE PLAIN-MEANING CONSTRUCTION OF THE RICO ACT AS AUTHORIZING INJUNCTIVE RELIEF IN PRIVATE ACTIONS IS CONSISTENT WITH BOTH TEXTUALIST AND INTENTIONALIST APPROACHES TO STATUTORY INTERPRETATION.

The other statute at issue in this case, 18 U.S.C. § 1964(a), states: "The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders. . . ." That says all a textualist or an intentionalist needs to know about the legislative intent underlying § 1964(a). This provision of the RICO Act authorizes courts to issue a restraining order – that is, injunctive relief. As with § 1951(a), there is no need to go further.

The briefs of Petitioners and the United States contend the RICO Act does not authorize injunctive relief for private parties because injunctive relief is not mentioned in the private action provisions of § 1964(c). But here again, as with the Hobbs Act, context verifies plain meaning. Subsection (c) of § 1964 does not appear in isolation, but alongside subsection (a) of the statute, which plainly authorizes the district courts to address RICO violations with injunctive relief.

V. THE LEGISLATIVE HISTORIES OF § 1951(a) AND § 1964(a) NEED NOT BE INVESTIGATED.

The briefs of Petitioners and the United States rely heavily on legislative history to advance their convoluted interpretations of § 1951(a) (including the text and history of the Hobbs Act's 1934 predecessor, the text of the Hobbs Act in its original 1946 form, House and Senate reports on

the Hobbs Act's 1948 revision, the Reviser's Notes for the 1948 revision, and even the personal comments of Representative Hobbs) and § 1964(a) (including failed competing bills, subcommittee hearings, and floor debates). Given the plain meaning of both statutes, these legislative histories need not be investigated – nor should they be.

CONCLUSION

Congress spoke plainly in 1948 when making it a crime to commit or threaten violence targeting interstate commerce, and spoke plainly in 1970 when authorizing injunctive relief for RICO violations. No less now than then, the Members of Congress need assurance that when they speak plainly, this Court listens.

Respectfully submitted,

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In the Supreme Court of the United States

JOSEPH SCHEIDLER, ET AL.
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.
Respondents,

OPERATION RESCUE, ET AL.
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.
Respondents.

On Writs of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AND THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, AS *AMICI CURIAE*, IN SUPPORT OF RESPONDENTS

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BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS[1]

The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") and the National Association for the Advancement of Colored People ("NAACP") respectfully submit this brief as *amici curiae* in support of the Respondents pursuant to Supreme Court Rule 37.3(a) upon the consent of the parties.[2]

INTEREST OF *AMICI CURIAE*

The Lawyers' Committee is a non-profit, non-partisan organization founded in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

The NAACP is a non-profit organization dedicated to ensuring the political, educational, social and economic equality of rights of all persons. Since its founding in 1909, the NAACP has worked to eliminate racial hatred and racial discrimination. The NAACP is the nation's oldest civil rights organization.

The Lawyers' Committee and the NAACP submit this brief to express their views on the second and third questions on review. The second question is whether the Hobbs Act independently proscribes acts or threats of

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[1] This brief was authored by counsel for the *amici curiae*. No person or entity other than the *amici curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief.

[2] Letters of consent to the filing of this brief have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3

physical violence in furtherance of a plan to obstruct, delay, or affect interstate commerce, and the third question is whether injunctive relief is available to private litigants under the remedial provisions of RICO.

For several decades, the Lawyers' Committee and the NAACP have served to secure and protect the civil rights of all citizens, particularly racial minorities, who have historically been denied those rights. Those rights, in large measure, have been obtained by groups and individuals engaging in peaceful protests, demonstrations, sit-ins, boycotts, and other forms of constitutionally protected non-violent advocacy and expression. *Amici* have sought to protect this process of peaceful change under law which, at times, has been jeopardized by organized violence and threats of violence. In a significant case before the Court, the Lawyers' Committee represented the NAACP in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), in which the Court upheld the constitutionality of non-violent activities of African Americans boycotting local white businesses in protest to policies of racial discrimination. Accordingly, the Lawyers' Committee and the NAACP are well aware of the importance of protecting expressive rights as a means of societal change, an issue obviously confronting the Court in this case.

With respect to the second question, the interests of the Lawyers' Committee and the NAACP are narrowly focused upon the proper application of First Amendment principles to the construction of the Hobbs Act so as to maintain a balance between protecting the freedoms of expression central for the advancement of the civil rights of citizens while prohibiting violent threats and conduct that prevent citizens from exercising their rights. The Lawyers' Committee and the NAACP have and take no position in the highly charged debate over abortion rights out of which the

facts in this case arise. The Lawyers' Committee and the NAACP embrace the right of all groups to express their views and to attempt to persuade others to adopt those views. Freedom of expression of all points of view through *peaceful* protest activities should not be stifled by civil or criminal liability or injunctive relief under RICO, the Hobbs Act, or other state and federal laws.

At the same time, the Lawyers' Committee and the NAACP believe that civil rights and free expression are enhanced, rather than chilled, by the imposition of liability against those who would use acts and threats of physical violence, rather than legitimate means of persuasion, to prevent others from engaging in lawful and protected conduct. In keeping with these principles, the Lawyers' Committee and the NAACP believe that the Court need not and should not opt for a narrower reading of the Hobbs Act out of concern for chilling or burdening protesters' freedom of expression. Interpreting the Hobbs Act as independently proscribing acts or threats of violence that obstruct, delay, or affect interstate commerce would not burden or chill protected forms of expression.

The Lawyers' Committee and the NAACP also are concerned with protecting the rights of citizens who are subjected to pervasive criminal conduct and believe that the remedial provisions of RICO are an important tool for private litigants. Therefore, with respect to the third question, the Lawyers' Committee and the NAACP support the congressionally intended right of plaintiffs in civil suits under RICO to avail themselves of a full range of remedies, including equitable and injunctive relief, in order to protect their own rights and to serve the public's interest in curtailing ongoing criminal enterprises. The Lawyers' Committee and the NAACP therefore urge the Court to

confirm that RICO authorizes private litigants to obtain injunctive relief.

SUMMARY OF ARGUMENT

The plain language of subsection (a) of the Hobbs Act clearly proscribes acts or threats of physical violence that obstruct, delay, or affect interstate commerce, whether or not the acts or threats are connected to robbery or extortion. Any other reading of the statute would render the final "physical violence" clause of subsection (a) superfluous. The narrower reading of the Hobbs Act urged by Petitioners is contrary to the statutory text and unnecessary to protect legitimate social protests. There simply is no First Amendment right to engage in acts and threats of physical violence.[3]

The First Amendment clearly demands tolerance of speech that is hostile, offensive, or even coercive. The First Amendment, however, has never been extended to protect those who resort to violence rather than legitimate means of persuasion to express their opinions. Thus "true threats" of physical violence and "fighting words" creating a clear and immediate danger of violent injury lack constitutional protection. Congress has carefully crafted the Hobbs Act to proscribe this unprotected conduct and enforcement of the plain language of subsection (a) is unlikely to burden or chill legitimate forms of expression.

Petitioners claim that, because of the broad-based nature of enterprise liability under RICO, a construction of the Hobbs Act as proscribing violent threats and conduct

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[3] As noted in the Introduction, the Lawyers' Committee is expressing its views only on Questions 2 and 3 before the Court, relating to the scope of the Hobbs Act and the availability of injunctive relief for private litigants under RICO.

could cause individuals to be punished for engaging in protected conduct. These concerns are unwarranted. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982), requires "precision of regulation" to ensure that those engaged in social protest will not face civil or criminal liability, under RICO, the Hobbs Act, or other state or federal laws for the consequences of constitutionally protected forms of expression. The protections articulated in *Claiborne Hardware*, which were rigorously applied in this case, ensure that liability is imposed only for damages proximately caused by *unprotected* conduct and that no protester is punished merely for exercising the constitutional right to associate with others of like opinion.

As to the third question, the plain language of RICO does not contain a clear Congressional command stripping the federal courts of their traditional equitable powers to grant injunctive relief. Such a pronouncement would be required to deprive the courts of the power to grant injunctive relief. In expressly authorizing the Attorney General to seek preliminary injunctive relief, Congress has certainly not removed the power of the courts to grant a permanent injunction. Likewise, the grant to the Attorney General of standing to temporarily restrain a statutory violation does not limit the standing of those directly victimized to seek equitable protection. Public policy also favors allowing private plaintiffs to obtain injunctions because that interpretation of RICO will lead to more rigorous enforcement of the statute and the protection of public and private interests against ongoing criminal enterprises.